

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

CIVIL NO. 12-257 (JB-LFG )

LARRY A. GOLDSTONE,  
CLARENCE G. SIMMONS, III, and  
JANE E. STARRETT,

Defendants.

**PLAINTIFF'S RESPONSE TO  
DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants submit *SEC v. St. Anselm Exploration Co.*, 11-cv-00668, 2013 U.S. Dist. LEXIS 45547 (D. Colo. Mar. 29, 2013), in support of the proposition that there is some “emerging consensus” that scheme liability requires conduct in addition to any misrepresentations alleged. (Notice at 1.) However, this is not in dispute. As Plaintiff has previously stated, “at most, the cases require that in order to allege scheme liability a plaintiff must prove some conduct beyond the misrepresentations to investors.” (Plaintiff’s Surreply to Defendant Jane Starrett’s Reply in Support of Motion to Dismiss (Dkt # 63), at 9.) *St. Anselm* is nothing more than a case applying this standard, on different facts, and concluding that it was not satisfied.

By contrast, Plaintiff has plainly alleged such conduct here. Among other things, the Commission has plainly alleged that Ms. Starrett made misrepresentations to Thornburg’s auditors, conduct that is both inherently deceptive and in addition to the misrepresentations in the

Thornburg 2007 Form 10-K. (*See id.* at 7-8 (citing *SEC v. Kearns*, 691 F. Supp. 2d 601, 618 (D.N.J. 2010)).) Nothing in the *St. Anselm* decision suggests that such conduct cannot be the basis for scheme liability.

Indeed, *St. Anselm* is readily distinguishable. In that case, the court noted that “[t]he only way in which [the actions] might be conceived to be deceptive is by virtue of the SEC’s contention that they bolstered the allegedly false impression created by defendants’ misrepresentations and omissions which form the basis of the 10b-5(b) and section 17(a)(1) claims.” *St. Anselm*, at \*45. By contrast, Plaintiff here alleged that the Defendants were engaged in a scheme to raise additional liquidity and took actions – “purposefully” withholding information from Thornburg’s auditors, filing the Form 10-K in a brief window in which margin calls were satisfied, and then quickly seeking to raise money based upon the misleading Form 10-K – that were deceptive independent of the Thornburg 2007 Form 10-K.

DATED this 8th day of April, 2013

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### CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2013, the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system that will send notification of such filing to all counsel of record.

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